

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:

Communications Assistance for Law
Enforcement Act and Broadband Access
and Services

ET Doc. No. 04-295

RM-10865

EX PARTE COMMENTS OF 3G AMERICAS

3G Americas, LLC (“3G Americas”) represents manufacturers and service providers with an interest in the GSM family of wireless technologies¹ in the Americas. Its primary mission is to promote the evolution to, and seamless deployment of, third generation technology throughout the Americas. 3G Americas submits these comments in response to the 18-month compliance deadline set forth in the Commission’s *First Report and Order and Further Notice of Proposed Rulemaking*.²

As the record before the Commission demonstrates, the existing deadline – which the Commission set while at the same time acknowledging that “important questions” regarding implementation remain unanswered – is simply unworkable. Objections to the deadline have taken many forms, including *ex parte* comments regarding the upcoming

¹ GSM, GPRS, EDGE, UMTS, and HSDPA. 3G Americas board member companies include Andrew Corporation, Cingular Wireless (USA), Cable & Wireless (West Indies), Ericsson, Gemplus, HP, Lucent Technologies, Motorola, Nokia, Nortel Networks, Openwave Systems, Research In Motion, Rogers Wireless (Canada), Siemens, T-Mobile USA, Telcel (Mexico), Telefónica Moviles and Texas Instruments. See www.3gamericas.org.

² *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd. 14989 (2005) (“*First Report and Order*”).

Second Report and Order,³ comments responding to the Further Notice of Proposed Rulemaking,⁴ a petition for reconsideration of the Commission's order,⁵ a request for issuance of a stay of the deadline pending issuance of further orders,⁶ and petitions for review by the U.S. Court of Appeals for the District of Columbia Circuit.⁷ 3G Americas adds its voice to these and many other comments urging that the existing compliance deadline be changed.⁸

³ See, e.g., *Ex Parte Filing of the Information Technology Industry Council* (filed Dec. 16, 2005).

⁴ See, e.g., *Comments of the Information Technology Industry Council* at 6-9 (filed Nov. 14, 2005).

⁵ *United States Telecom Association Petition for Reconsideration and for Clarification of the CALEA Applicability Order* (filed Nov. 14, 2005)

⁶ *Request for Stay Pending Issuance of Subsequent Orders and for Stay Pending Judicial Review Submitted on Behalf of Center for Democracy & Technology, American Library Association, Association for Community Networking, Association of College and Research Libraries, Association of Research Libraries, Champaign Urbana Community Wireless Network, Electronic Frontier Foundation, Electronic Privacy Information Center, Pulver.com, Sun Microsystems and Texas Internet Service Providers Association* (filed Nov. 23, 2005).

⁷ See *Am. Council on Ed., et al. v. FCC*, No. 05-1404 (D.C. Cir.) (consolidated with *Comptel, et al. v. FCC*, No. 05-1408 (D.C. Cir.), *ACLU v. FCC*, No. 05-1438 (D.C. Cir.), *Pacific Northwest Gigapop, et al. v. FCC*, No. 05-1451 (D.C. Cir.), *Am. Ass'n of Comm. Colleges, et al. v. FCC*, No. 05-1453 (D.C. Cir.)).

⁸ See also *Comments of the Higher Education Coalition* (filed Nov. 14, 2005); *Comments of Washington State Community College* (filed Dec. 8, 2005); *Reply Comments of the Florida State University* (filed Dec. 12, 2005); *Reply Comments of Florida Board of Governors State University System of Florida* (filed Dec. 20, 2005); *Reply Comments of University of Maryland, College Park* (filed Dec. 20, 2005); *Reply Comments of University of West Florida Board of Trustees* (filed Dec. 21, 2005); *Reply Comments of the Higher Education Coalition* (filed Dec. 21, 2005); *Reply Comments of the United Power Line Council* (filed Dec. 21, 2005); *Comments of the University of Michigan* (filed Dec. 21, 2005); *Reply Comments of the Satellite Industry Association* (filed Dec. 21, 2005); *Comments of 8x8 Inc., Acorn Active Media, American Library Association, Association for Community Networking, Association of College and Research Libraries, Association of Research Libraries, Center for Democracy & Technology, Champaign Urbana Community Wireless Network, Electronic Frontier Foundation, Information Technology Association of America, Texas Internet Service Providers Association, and The VON Coalition* (filed Dec. 30, 2005); *Comments of Global Crossing North America, Inc.* (filed Jan. 19, 2006); *Comments of the Telecommunications Industry Association* (filed Jan. 19, 2006); *Comments of CTIA-The Wireless Association* (filed Jan. 19, 2006); *Comments of the American Civil Liberties Union* (filed Jan. 19, 2006); *Comments of the Satellite Industry Association* (filed Jan. 19, 2006); *Joint Comments of the National Telecommunications Cooperative Association and the Organization for the Promotion and Advancement of Small Telecommunications Companies* (filed Jan. 19, 2006); *Comments of the American Library Association, Association of Research Libraries and Association of College and Research Libraries* (filed Jan. 30, 2006); *Comments of US LEC Acquisition Co.* (filed Jan. 30, 2006); *United States Telecom Association Reply to Oppositions* (filed Jan. 30, 2006); *Reply Comments of the United Power Line Council* (filed Jan. 30, 2006); *Reply Comments of the Information Technology Industry Council* (filed Jan. 30, 2006).

In the *First Report and Order*, the Commission acknowledged that its decision was limited in scope, and promised that a subsequent order would address a number of “outstanding issues under CALEA,” including but not limited to “important questions regarding the ability of broadband Internet access providers and VoIP providers to provide all of the capabilities that are required by section 103 of CALEA, including what those capability requirements mean in a broadband environment.”⁹ But despite this admitted lack of crucial guidance as to telecommunications carriers’ obligations in the *First Report and Order*, the Commission also mandated a narrow 18-month compliance window beginning on the effective date of that order.¹⁰ That window now has been open for over two months, and providers are no closer to knowing what compliance effort will be sufficient.

As numerous comments have observed, starting the compliance clock without indicating how to comply is simply unreasonable. Telecommunications providers and equipment manufacturers face the prospect of waiting until some uncertain date in the future for additional direction, thereby risking substantial penalties for missing the compliance deadline,¹¹ or attempting to comply absent essential guidance from the Commission. 3G Americas urges the Commission to abandon the deadline set forth in the *First Report and Order*, which promises widespread non-compliance, a flood of

⁹ *First Report and Order*, 20 FCC Rcd at 15008, 15012 (¶ 39, 46).

¹⁰ In contrast, 3G Americas notes that the PSTN CALEA compliance was significantly delayed even at 30 months. See *Implementation of the Communications Assistance for Law Enforcement Act by the Federal Bureau of Investigation*, Audit Report 04-19 (April 2004), Office of the Inspector General, Executive Summary, available at <http://www.usdoj.gov/oig/reports/FBI/a0419/index.htm> (“After more than nine years and nearly \$450 million in payments or obligations [to carriers], deployment of CALEA technical solutions for electronic surveillance remains significantly delayed. [A]ccording to FBI estimates, CALEA compliant software has been activated on only 10 to 20 percent of wireline equipment.”).

¹¹ See 18 U.S.C. § 2522(c)(1) (authorizing fines up to \$10,000 a day for noncompliance).

waiver requests, and needless implementation costs as providers and manufacturers struggle (some successfully, others not) to meet the deadline. Instead, the Commission should – at the very least – reset the compliance clock to begin only after it has issued its second Report & Order.

Respectfully Submitted,

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February 7, 2006